

**SB 222**EXHIBIT NO. 12  
DATE 2-12-13  
BILL NO. SB 222

SB 222 at page 1 lines 28-30, and Page 3, lines 15-17, is patently unconstitutional as it provides probationary employees lesser benefits than other employees without a rational basis. Cost control alone has been rejected as a rational basis for disparate treatment of similarly situated workers compensation claimants.

**Reesor v. State Fund, 2004 MT 370**

¶8 Article II, Section 4, of the Montana Constitution provides that "[n]o person shall be denied the equal protection of the laws." Reesor contends the failure of the Workers' Compensation Act (WCA) to extend the same PPD benefits to "retired persons" as to younger workers, pursuant to § 39-71-710, MCA, violates his rights to equal protection under the Montana Constitution.

¶15 We next turn to the heart of equal protection analysis, that is, whether the government's stated objective bears a rational relationship to the statutory classification adopted by the Legislature and set forth in § 39-71-710, MCA. We said in *Henry* that "[a] classification that is patently arbitrary and bears no rational relationship to a legitimate governmental interest offends equal protection of the laws. As we have previously held, equal protection of the laws requires that all persons be treated alike under like circumstances." *Henry*, ¶ 36 (quoting *Davis v. Union Pacific R. Co.* (1997), 282 Mont. 233, 242-43, 937 P.2d 27, 32).

¶19 The issue in this case is whether it is fair to deny men and women full PPD benefits simply because their age makes them eligible to receive social security retirement or similar benefits. We conclude that the disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to that legitimate governmental interest.

¶25 Therefore, we conclude that providing PPD benefits to a younger person in Reesor's situation in the amount of \$23,056.25 under the WCA, but limiting Reesor's benefit, based on his age, to only \$2,975 pursuant to § 39-71-710, MCA, violates the Equal Protection Clause found in Article II, Section 4 of the Montana Constitution. There has been a failure to demonstrate a rational basis for the infringement of such a constitutionally protected right, therefore, we hold that § 39-71-710, MCA, is unconstitutional.

## **Henry v. State Fund, 1999 MT 126**

Accident claimant gets rehab benefits, OD claimant does not.

¶33. The rational basis test requires the government to show (1) that the statute's objective was legitimate, and (2) that the statute's objective bears a rational relationship to the classification used by the legislature. Stated another way, the statute must bear a rational relationship to a legitimate governmental interest. *Heisler*, 282 Mont. at 279, 937 P.2d at 50; *Matter of S.L.M.*, 287 Mont. at 32, 951 P.2d at 1371.

¶36. We next analyze whether that objective bears a rational relationship to the classification used by the legislature. As this Court has stated:

A classification that is patently arbitrary and bears no rational relationship to a legitimate governmental interest offends equal protection of the laws. As we have previously held, equal protection of the laws requires that all persons be treated alike under like circumstances.

*Davis v. Union Pacific R. Co.* (1997), 282 Mont. 233, 242-43, 937 P.2d 27, 32 (citation omitted).

¶40. Any argument that economic reasons justify treating the two classes differently must be rejected. This Court has previously held that cost control alone is no justification. As we stated:

Cost-control alone cannot justify disparate treatment which violates an individual's right to equal protection of the law. Discrimination, that is, offering services to some while excluding others for any arbitrary reason, will always result in lower costs. We do not, however, allow discrimination merely for the sake of fiscal health.

*Heisler*, 282 Mont. at 283, 937 P.2d at 52.

¶45. We conclude that providing rehabilitation benefits to workers covered by the WCA, but not to workers covered by the ODA, is not rationally related to the legitimate governmental interest of returning workers to work as soon as possible after they have suffered a work-related injury. We hold that the ODA violates the equal protection clause of the Montana Constitution to the extent that it fails to provide vocational rehabilitation benefits.